

**APPLICATION FOR EXISTING LAWFUL
DEVELOPMENT: USE OF LAND AND
BUILDING FOR CLASS E (COMMERCIAL,
BUSINESS AND SERVICE) USE**

Land west of Winchester Rd, Crowd Hill, Fair Oak,
Eastleigh SO50 7HD

SUPPORTING STATEMENT

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Client: Mr I Cole

Date: June 2024

Ref: E/492/AW

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Appendices

1. Copy approved site plan and decision notice for planning permission Z/13732/007
2. Copy of approved site location plan, application forms and decision notice for planning permission F/15/77191
3. Copy of approved site location plan, block plan and site location plan and decision notice for planning permission F/20/88608

Exhibits

1. The Plan
2. Aerial images
3. Portslade Garages Agreement 1992
4. Tates contract letters 1993
5. Report of valuation 2001
6. Title register and plan HP461552
7. Style Improvements letter 2009
8. Andrew Carroll Licence agreement 2009
9. DG Marketing license agreement 2013
10. THT Licence agreement 2022
11. Silverland Stone Letter 2024

1.0 INTRODUCTION

- 1.1 This supporting statement is prepared by Southern Planning Practice Ltd in support of an application for a Lawful Development Certificate under section 191 of the Town and Country Planning Act 1990 (as amended) on behalf of Mr I Cole for the use of land and buildings for Class E (commercial business and service) use.
- 1.2 The use of land and buildings for Class E (commercial business and service) purposes, in breach of conditions, commenced in 1993. It occurred more than ten years from the date of this application.
- 1.3 The plan submitted with this application marked “**Exhibit I**” (“the plan”) shows the extent of the land and buildings in question and is edged red on the plan.
- 1.4 By virtue of section 171B (3) of the 1990 Act no enforcement action can be taken against the use of land and buildings for Class E (commercial business and service) use.
- 1.5 This statement sets out the case and the evidence to support the certificate.

2.0 SITE

- 2.1 The extent of the site is edge red on plan “Exhibit 1” (the plan). It forms part of a parcel of land and building , located to the north of In-Excess Garden Centre (formally Wyevale) on the west side of Winchester Hill in the Eastleigh Borough.
- 2.2 The main access to the site is a shared route from the west side of Winchester Hill over which the applicant and owner has a right of way.
- 2.3 The site is rectangular in shape and the land and four buildings have been in use for class E since 1993. It consists of hard standing, a brick built office building to the west, four conservatories and a display area to the rear (east) of the brick built office building.
- 2.4 It is surrounded by chain-link fencing to the south and west with mature boundary planting to the east. A 2m high close board fence is located along the north.



View of existing brick built office building



View of existing conservatories looking north from access point



View of existing conservatories to the east looking south from site to the north



Display area



Display area



Display area



Display area



View of site from Winchester Road looking west

- 2.5 The buildings (including the brick built office building and four conservatories) have been present since 2005 and display area has been erected since 2012.
- 2.6 Immediately to the north, separated by the 2m high close board timber fence, is an area used for mixed use for storage, sales and distribution purposes which also within the applicant's ownership. This area of land is the subject of a separate application for a certificate of existing lawful development.

3.0 PLANNING HISTORY

- 3.1 Planning permission Z/13732/007 was granted on 11th February 1982 for the use of land as a garden centre – to regularise the existing use at Beech Farm Nurseries (see **Appendix I**) and the approved plan shows the application site as car parking. Condition 4 of this planning permission states:

“Retail sales of nursery stock and garden sundries shall only take place from the build since hatched yellow on the approved plan”.

- 3.2 Condition 8 of this planning permission states:

“No other area than that hatched brown on the approved plan shall be used for the sale of greenhouses and garden sheds without the prior written consent from the Local Planning Authority”

- 3.3 A copy of the approved site plan and decision notice is shown at **Appendix I**.

- 3.4 Planning permission F/15/77191 for a single storey garden centre concession building following demolition of existing building and erection of retaining wall was granted on 28/12/2015. This red line area on the site location plan submitted and approved under the planning permission encompassed the land and building on this application site, as well as the rest of the land and buildings associated with the garden centre, but the land was not under one ownership at the time. As the applicant owns a portion of the site red lined under this application, he should have been notified and served notice on by Fair Oak Garden Centre who were the applicants at the time. The application forms incorrectly states that the applicants owned all of the land under certificate A and the owner of this application site was not served notice under article 13. It should therefore be considered invalid (see copies of the decision notice, approved site location plan and application form at **Appendix 2**).

- 3.5 Condition 4 of planning permission F/15/77191 limited the retail sales from the building permitted to ‘nursery stock, garden sundries, garden sheds and greenhouses, the sales of

cold water and tropical fish, fish supplies, ponds and tanks'. This condition is not considered to bite on the application site and is specific to the building approved. Any other conditions of planning permission F/15/77191 would be ultra vires as they would remove the owner's ability to execute the lawful planning rights across his private property.

3.6 Planning permission F/20/88608 for the *Redevelopment of garden centre to remove redundant storage barns and provide new industrial storage unit, indoor + outdoor soft play, toilets, entrance and staff room, to include retrospective permission for two open sided canopies* was permitted on 26th November 2021. The submitted and approved site location plan excluded the application site within the red line boundary but included it within the blue line, which usually means the site is within the ownership of the applicant. The applicants in this instance, In-excess Garden Centre, again incorrectly state the applicants owned all of the land under certificate A and the owner of this application site was not served notice under article 13 (see copies of the decision notice, approved site location plan and application form at **Appendix 3**).

4.0 EVIDENCE

- 4.1 The aerial photography from Google earth demonstrates the land and building was in mixed use for storage, sales and distribution purposes in 2000- 2022 as identified on the aerial images at **Exhibit 2**.
- 4.2 The applicant, Mr Ian Cole originally leased the application site land to the north from Portslade Garges Ltd for his landscaping business, Southern Stone and Paving in 1992 as shown at **Exhibit 3**.
- 4.3 In 1993 Mr Ian Cole entered a separate licence agreements to lease the application site from Tates Bros Ltd (part of Portslade Garages Ltd) for the sales of conservatories and garden buildings as shown at **Exhibit 4**.
- 4.4 Mr Cole commissioned a Report of Valuation in 2001 (**Exhibit 5**) and then purchased the land in 2002 (see **Exhibit 6**).
- 4.5 He then leased the two parts of the land out for separate uses in 2003. The area of the application site containing the conservatory buildings and land surrounding it was leased to Style Improvements from 2003 until 2009 (see **Exhibit 7**) and the brick-built office and display area was occupied by Silverland Stone.
- 4.6 In 2009 the conservatory buildings and land surrounding it within the application site was then leased to Andrew Carroll for the display and sale of conservatories, garden buildings and ancillary goods until 2013 (see **Exhibit 8**).
- 4.7 During this time Silverland Stone erected a 2m high close board timber fence between the application site and the area to the north (outside the application site) to separate the display area from the yard to the north.
- 4.8 In 2013 DG Marketing Ltd leased conservatory buildings and land surrounding it within the application site to facilitate the sale of goods and services (see **Exhibit 9**) until 2022.
- 4.9 From 2022 THT Ltd entered into an agreement for the use of the conservatory buildings and land surrounding (see **Exhibit 10**) for their offices to facilitate the sale of home

improvement goods and services and currently remain on site. Silverland Stone served notice to vacate the brick-built office building and display area in early 2024 (see **Exhibit II**).

5.0 PLANNING LAW

- 5.1 This application is made under Section 191 of the Town & Country Planning Act 1990 (as amended) “the Act”, which enables anyone to apply to the local planning authority for a decision whether a specified existing use, operation, or failure to comply with a planning condition or limitation, which has already been carried out on land, is lawful for planning purposes. Section 191 (1) and (2) of “the Act” states:

“191. Certificate of lawfulness of existing use or development.

(1) If any person wishes to ascertain whether—

(a) any existing use of buildings or other land is lawful;

(b) any operations which have been carried out in, on, over or under land are lawful; or

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(2) For the purposes of this Act uses and operations are lawful at any time if—

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason);

(b) They do not constitute a contravention of any of the requirements of any enforcement notice then in force.”

- 5.2 Following the Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024 coming into effect on the 25th April 2024. As a result, the time period in which local planning authorities can take enforcement action against unauthorised development in England is, in all cases, 10 years.

- 4.10 The time limits when enforcement action can be taken are specified in the following relevant Section of 171B of the Act:

“(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach”

- 5.3 This application is submitted under section 191(1) on the grounds that the use of land and buildings for Class E (commercial business and service) use has continued, in breach of

conditions 4 and 8 of planning permission Z/13732/007, uninterrupted for more than ten years.

5.4 By virtue of section 171B (3) of the 1990 Act no enforcement action can be taken against the use of the land and building.

5.5 For these reasons, it is considered that the development is lawful.

6.0 CONCLUSION

- 6.1 From the evidence submitted it has been demonstrated the use of the land and buildings for Class E (commercial business and service) use has been operating in breach of conditions 4 and 8 of planning permission Z/13732/007, continually for in excess of ten years. Thus, the use of the land and buildings is immune from enforcement action under the ten-year rule.
- 6.2 The onus of proof of the lawfulness of a use or operation rests with the applicant. Further the Courts have held that the test of evidence is “*the balance of probability*”.
- 6.3 The applicant has clearly shown that the use of land and buildings has been operating in breach of conditions 4 and 8 of planning permission Z/13732/007, uninterrupted for more than ten years. Therefore, the local planning authority “need not go to great lengths to show that the subject of the application is or is not lawful¹.”
- 6.4 Accordingly, it is requested that this application for a Certificate of Lawful Development be approved.

¹ Certificate of lawful use or development appeals: procedural guide. Updated 11 January 2024 paragraph 2.1.1